

GAHC010085572023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./375/2023

SHERMAN ALI AHMED
S/O LATE ROUSHAN ALI AHMED
R/O OLD MLA HOSTEL
DISPUR, P.S. DISPUR
GUWAHATI-781006
DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR Z KAMAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

14.08.2023

Heard Mr. Z. Kamar, learned Senior counsel, assisted by Mr. S.U. Ahmed, learned counsel for the petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor, Assam.

This instant application under section 482 read with section 439 (1)(b) of the Code of Criminal Procedure has been filed for setting aside the impugned order dated 01.03.2023, whereby learned Special Judge, Assam rejected the application of the petitioner which was filed for seeking alteration/relaxation/modification of condition nos. 2 and 3 of the bail order dated 28.10.2021 passed by learned Trial Court in connection with Vigilance P.S. Case No. 02/2021.

It is the case of the petitioner that Vigilance P.S. Case No. 02/2021 was registered under 120B/406/420/409/468/471 of the Indian Penal Code, read with section 13(2) of the Prevention of Corruption Act, 1988, wherein the present petitioner was arrested. Later on, he was allowed to go on bail by order dated 28.10.2021 by putting four conditions.

1. He shall co-operate with the investigation and appear before investigating officer as and when directed.

2. Not to leave the jurisdiction of this Court without prior permission of this Court.

3. Surrender the Passport before the Sheristader of this Court without prior permission of this Court.

4. The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing such facts to the Court.

The petitioner, thereafter, on the ground of getting his son admitted to a course and for that purpose he was allowed to go to London and his passport was temporarily given to him and he was also allowed to leave the jurisdiction of the Court of learned Special Judge, Assam. Later on, the petitioner approach again before the Court of learned Special Judge for relaxation of the condition

no. 2 and 3 in the bail order dated 28.10.2021. However, by the impugned order dated 01.03.2023, learned Special Judge rejected the relaxation of Clause 2 and 3 on the ground that the Court allowed the petitioner to leave the jurisdiction of the said Court and also release passport temporarily when it was so required by the petitioner. So, there was no reason for considering the relaxation of the condition no. 2 and 3 as prayed for by the petitioner as the investigation was still pending at that point of time.

Now, learned Senior counsel has prayed for, in the meanwhile the investigation has been completed and charge-sheet has been laid being charge-sheet no. 03 dated 01.03.2023, wherein the present petitioner has also been remained one of the accused. However, charge-sheet has been laid against him under lesser provisions of law, i.e. under section 120B/294/506 of the Indian Penal Code and on that ground under the changed circumstances, learned Senior Counsel has prayed for relaxation of the stringent conditions which were imposed by the learned Special Judge.

On the other hand, Mr. M. Phukan, learned Public Prosecutor submits that the stringent conditions were imposed while granting the bail order when the case was investigated against the present petitioner under any other provisions of law which were stringent in nature and under which the charge-sheet has not been laid. So, if under the present changed circumstances petitioner intends a modification of the bail order. He may again approach before the learned Trial Court.

I see logics in the submissions made by learned Public Prosecutor as at the time when the impugned order was passed, investigation was still pending and learned Trial Court was not knowing under what provision the charge-sheet would be laid. He was correct in not relaxing the conditions at that point of

time. However, under the changed circumstances, the petitioner may again approach the learned Trial Court, i.e. learned Special Judge, Assam for relaxation of the stringent conditions imposed while granting him bail by this learned Special Court, if so advised.

With the above observations, this Criminal Petition is hereby disposed of.

JUDGE

Comparing Assistant